

#### § 386.14

#### 49 CFR Ch. III (10–1–04 Edition)

(2) Copies of all evidence upon which petitioner relies in the form set out in § 386.49;

(3) All legal and other arguments which the petitioner wishes to make in support of his/her position;

(4) A request for oral hearing, if one is desired, which must set forth material factual issues believed to be in dispute;

(5) Certification that the reply has been filed in accordance with § 386.31; and

(6) Any other pertinent material.

(b) Failure to submit a petition as specified in paragraph (a) of this section shall constitute a waiver of the right to petition for review of the determination or letter of disqualification. In these cases, the determination or disqualification issued automatically becomes the final decision of the Assistant Administrator 30 days after the time to submit the reply or petition to review has expired, unless the Assistant Administrator orders otherwise.

(c) If the petition does not request a hearing, the Assistant Administrator may issue a final decision and order based on the evidence and arguments submitted.

#### § 386.14 Replies and request for hearing: Civil forfeiture proceedings.

(a) *Time for reply.* The respondent must reply within 15 days after a Claim Letter is served, or 30 days after a Notice of Investigation is received.

(b) *Contents of reply.* The reply must contain the following:

(1) An admission or denial of each allegation of the claim or notice and a concise statement of facts constituting each defense;

(2) If the respondent contests the claim or notice, a request for an oral hearing or notice of intent to submit evidence without an oral hearing must be contained in the reply. A request for a hearing must list all material facts believed to be in dispute. Failure to request a hearing within 15 days after the Claim Letter is served, or 30 days in the case of a Notice of Investigation, shall constitute a waiver of any right to a hearing;

(3) A statement of whether the respondent wishes to negotiate the terms

of payment or settlement of the amount claimed, or the terms and conditions of the order; and

(4) Certification that the reply has been served in accordance with § 386.31.

(c) *Submission of evidence.* If a notice of intent to submit evidence without oral hearing is filed, or if no hearing is requested under paragraph (b)(2) of this section, and the respondent contests the claim or the contents of the notice, all evidence must be served in written form no later than the 40th day following service of the Claim Letter or Notice of Investigation. Evidence must be served in the form specified in § 386.49.

(d) *Complainant's request for a hearing.* If the respondent files a notice of intent to submit evidence without formal hearing, the complainant may, within 15 days after that reply is filed, submit a request for a formal hearing. The request must include a listing of all factual issues believed to be in dispute.

(e) *Failure to reply or request a hearing.* If the respondent does not reply to a Claim Letter within the time prescribed in this section, the Claim Letter becomes the final agency order in the proceeding 25 days after it is served. When no reply to the Notice of Investigation is received, the Assistant Administrator may, on motion of any party, issue a final order in the proceeding.

(f) *Non-compliance with final order.* Failure to pay the civil penalty as directed in a final order constitutes a violation of that order subjecting the respondent to an additional penalty as prescribed in subpart G of this part.

[50 FR 40306, Oct. 2, 1985, as amended at 56 FR 10183, Mar. 11, 1991]

#### § 386.15 [Reserved]

#### § 386.16 Action on petitions or replies.

(a) *Replies not requesting an oral hearing.* If the reply submitted does not request an oral hearing, the Assistant Administrator may issue a final decision and order based on the evidence and arguments submitted.

(b) *Request for oral hearing.* If a request for an oral hearing has been filed, the Assistant Administrator shall determine whether there are any material factual issues in dispute. If there